

PATENT  
Atty. Dkt. No. ATT/2003-0225

### **REMARKS**

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are unpatentable, anticipated or obvious under the provisions of 35 U.S.C. §§112, 102 and 103. Thus, the Applicants believe that all of these claims are now in allowable form.

#### **I. IN THE CLAIMS**

The Applicants herein amend claim 17 to correct informalities. Specifically, claim 17 was amended to end the claim with a period rather than a semi-colon. Furthermore, various claims were also amended only to address antecedent basis issues. The Applicants submit that no new matter was added.

#### **II. REJECTION OF CLAIMS 1-19**

The Examiner rejects claims 1-19 in the Office Action under 35 U.S.C. § 112 as being indefinite because of the term "charging a router" is used to mean "placing information about the router in a database" while the alleged accepted meaning is "powering up the router" and the term is not clearly defined in the specification.

In response, the Applicants herein amend independent claims 1 and 12 to clearly recite charging a "degradation". Claim 8 already recites this limitation. It is respectfully submitted that this limitation is clearly defined in the specification. As such, the Applicants respectfully submit that the claims fully comply with the requirements of 35 U.S.C. § 112 and request the rejection be withdrawn.

#### **III. REJECTION OF CLAIMS 1-8 AND 10-19 UNDER 35 U.S.C. § 102**

The Examiner rejected claims 1-8 and 10-19 in the Office Action under 35 U.S.C. §102 as being anticipated by Bradley, et al. (US Patent 7,082,463, issued July 25, 2006, herein referred to as "Bradley"). The Applicants herein amend independent claims 1, 8 and 12 and respectfully traverse the rejection.

Bradley teaches time-based monitoring of service level agreements. Bradley teaches monitoring service level agreements. The network provides

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time ranges for one or more tests to be performed to allow a customer to determine if they are being provided services in accordance with their SLA. (See Bradley, Abstract; Column 2, line 60 – Column 3, line 5).

The Examiner's attention is directed to the fact that Bradley fails to teach or suggest an apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value, as positively claimed by the Applicants. Specifically, Applicants' independent claims 1, 8 and 12 positively recite:

1. A system for making quality measurements in a network, the system comprising:
  - a plurality of routers for routing traffic through the network;
  - means for taking measurements on a path between a first router and a second router from said plurality of routers; and
  - means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value. (Emphasis added).
8. A method of making quality measurements in a network, the method comprising:
  - tracking at least one path that exhibits an R-Factor below a target threshold;
  - tracking a start time indicating when the R-Factor of a particular path falls below the target value;
  - tracking an end time indicating when the R-Factor of the particular path rises above the target value;
  - determining if an overlap exists between the start time and the end time for multiple paths connecting to a particular router;
  - charging the particular router connected to the multiple paths with one degradation if the overlap exists; and
  - charging the particular router connected to the multiple paths with each degradation if the overlap does not exist. (Emphasis added).
12. A server for making quality measurements in a network, the server comprising:
  - means for taking measurements on a path between a first router and a second router from a plurality of routers; and
  - means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value. (Emphasis added).

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In one embodiment, the Applicants' invention teaches an apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value. For example, the present invention translates measurements of the performance of a path between routers into measurements of the performance of the routers. (See e.g., Applicants' specification, p. 6, ll. 7-15).

Bradley fails to anticipate the Applicants' invention because Bradley fails to teach or suggest an apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one of a plurality of routers within the path when data related to measurements falls below a target value. Rather, Bradley only teaches monitoring performance of a path between device pairs. (See Bradley, col. 33, l. 41 – col. 34, l. 50). This is further evidence by the data collected in the screenshots illustrated by Bradley in Figs. 3A – 3E and 5A – 5E. In other words, Bradley does not teach or suggest using path performance to obtain performance of a specific device, but rather only path performance between device pairs. Bradley is not measuring the performance of a particular device along the path.

In contrast, the Applicants' invention teaches an apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value. In other words, the Applicants' invention translates path measurements into performance measurements of a particular router. Therefore, Bradley fails to anticipate the Applicants' independent claims 1, 8 and 12.

Furthermore, dependent claims 2-7, 10-11 and 13-19 depend from independent claims 1, 8 and 12, respectively, and recite additional limitations. For the same reasons discussed above, these dependent claims are also not anticipated by Bradley and are allowable. As such, the Applicants respectfully request the rejection be withdrawn.

**IV. REJECTION OF CLAIM 9 UNDER 35 U.S.C § 103**

The Examiner rejected claim 9 in the Office Action under 35 U.S.C. § 103 as being unpatentable over Bradley and Official Notice. The Applicants respectfully traverse the rejection.

The teachings of Bradley are discussed above. The Examiner takes Official Notice that a changed threshold in a computer networking environment was well known in the art the time the invention was made.

The Examiner's attention is directed to the fact that Bradley and Official Notice fail to disclose or suggest the novel apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value, as positively claimed by the Applicants' independent claims 1, 8 and 12. (See *supra*).

The Applicants' invention discloses an apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value. As discussed above, Bradley simply does not teach or suggest the novel apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value.

Moreover, the Examiner's Official Notice does not bridge the substantial gap left by Bradley because the Examiner's Official Notice also fails to teach or suggest an apparatus, method or server for making quality measurements in a network comprising means for charging a degradation against at least one particular router of the plurality of routers within the path when data related to the measurements falls below a target value. Thus, for all of the above reasons, the Applicants respectfully contend that claims 1, 8 and 12 of the present invention

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are not made obvious by the combination of Bradley and the Examiner's Official Notice.

Moreover, dependent claim 9 depends from independent claim 8 and recites additional limitations. As such, and for the exact same reason set forth above with regard to independent claim 8 being patentable over Bradley and the Examiner's Official Notice, the Applicants submit that claim 9 is also patentable over Bradley and the Examiner's Official Notice. As such, the Applicants respectfully request the rejection be withdrawn.

### **CONCLUSION**


Thus, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully Submitted,

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